IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

WP(C).No. 27029 of 2007(P)

PETITIONER:

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1. J.ILLIAS KUNJU,
   PUBLIC WORKS OVERSEER GR.I, CORPORATION OFFICE,
   THIRUVANANTHAPURAM.

2. V.SUGATHAN,
   PUBLIC WORKS OVERSEER GR.I,
   CORPORATION OFFICE, THIRUVANANTHAPURAM.

BY ADV. SRI.S.ABDUL RAZZAK

RESPONDENTS:

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1. THE DIRECTOR OF MUNICIPAL ADMINISTRATION
   THIRUVANANTHAPURAM.

2. V.K.MAHESWARI,
   ASST.ENGINEER, MUNICIPAL OFFICE,
   KOTTAYAM.

3. P.T.BABU,
   ASST.ENGINEER,
   MUNICIPAL OFFICE, KOTTAYAM.

4. V.N.KUTTAN,
   ASST.ENGINEER, MUNICIPAL OFFICE, CHALAKUDY.

5. SAJEEV S.B.,
   ASST. ENGINEER, MUNICIPAL OFFICE,
   CHENGANNUR.

6. FRANCIS SEBASTIAN P.X.,
   ASST.ENGINEER, CORPORATION OFFICE,
   KOCHI.

7. JOJO MATHEW,
   ASST.ENGINEER, MUNICIPAL OFFICE,
   PERUNTHALMANNA.

BY GOVERNMENT PLEADER SRI.NANDAKUMAR
SRI.M.V.THAMBAN
SRI.B.GOPAKUMAR
SMT.CHINCY GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- PHOTOCOPY OF RELEVANT PORTION OF SENIORITY LIST OF PWO GR.II.

EXT.P2- PHOTOCOPY OF RELEVANT PORTION OF SENIORITY LIST OF PWO GR.I

EXT.P2(A)- PHOTOCOPY OF PROMOTION ORDER DATED 29.4.03

EXT.P3- PHOTOCOPY OF REVERSION ORDER DATED 13.10.03

EXT.P4- PHOTOCOPY OF INTERIM ORDER DATED 31.1.06

EXT.P5- PHOTOCOPY OF PROMOTION ORDER NO.B3-1634/06 DATED 15.2.06

EXT.P6- PHOTOCOPY OF PROMOTION ORDER NO.B3-14007/2005 DATED 2.11.06

EXT.P7- PHOTOCOPY OF 2ND PETITIONER'S REPRESENTATION DATED 14.6.06 TO R1.

(TRUE COPY)

P.A TO JUDGE

V.GIRI, J.

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W.P.(C)No.27029 of 2007

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Dated this the 14th day of December 2007

JUDGMENT

The petitioners are working as Overseers Grade I in the Public Works Department. According to them, they are eligible for promotion to the post of Assistant Engineers in the Kerala Municipal Common Service. In paragraph-1 of the writ petition, petitioners have given details as regards the date of appointment of the petitioners and respondents 2 to 7 in the category of PWO Grade II and Grade I.

Sl. No.	***Name***	***Category***	***PWO Gr.II***	***PWO Gr.I***
1.	J.Illias Kunju	Certificate	14.12.1978 Sl.No.45	20.4.1994 Sl.No.113
2.	V.Sugathan	Diploma	26.7.1979 Sl.No.51	6.6.1995 Sl.No.124
3.	V.K.Maheswari	Certificate	14.1.1987 Sl.No.104	23.8.1994 Sl.No.116
4.	P.T.Babu	Diploma	21.8.1989 Sl.No.117	13.11.1995 Sl.No.132
5.	V.N.Kuttan	Diploma	26.7.1979 Sl.No.56	12.2.1996 Sl.No.135
6.	Sajeev S.B.	Certificate	3.10.1989 Sl.No.121	5.11.1996 Sl.No.139
7.	Francis Sebastian.P.X.	Diploma	3.10.1989 Sl.No.125	7.2.1997 Sl.No.146
8.	Jojo Mathew	Certificate	18.3.1990 Sl.No.125	27.8.1997 Sl.No.148

2. Therefore it is contended that the first petitioner is senior to respondents 2 to 7 in the category of PWO Grade I and second petitioner is senior to respondents 3 to 7 in the same category.

3. Petitioners were promoted as Assistant Engineers as per Ext.P2(A) order along with respondents 3 to 5. But subsequently those promoted under Ext.P2 were reverted as per Ext.P3 order. Ext.P3 order was not challenged by the petitioners herein. But it was challenged by the contesting respondents herein. Some of them filed Writ Petition No.32718/2003. The others filed Writ Petition 32864/2003. The orders of reversion were found to be bad. In the case of Writ Petition No.32718/2003, it was declared that the petitioners therein will be treated as continuing in the post of Assistant Engineers. In the case of Writ Petition No.32864/2003, it was disposed of by Ext.R3(a) judgment holding that after ascertaining the cadre strength, the number of vacancies that were available for direct recruits, graduate engineers, diploma holders and certificate holders will have to be ascertained. Date of occurrence of vacancies in each of the categories will also have to be ascertained. This exercise was directed to be done within a time frame and it was made clear that the reversion of the petitioners in

Writ Petition 32864/2003 shall be kept in abeyance pending the same.

4. It seems that after the exercise as directed in Ext.R3(a) judgment was completed, the petitioners in Writ Petition NO.32864/2003 were again reverted. This was challenged by them in Writ Petition No.1942/2006. Later an interim order was passed by this Court (produced as Ext.P4 herein) directing them to be provisionally promoted under Rule 31(a)(i) of KS&SSR. This has been done. It is therefore respondents 2 to 7 continue to be Assistant Engineers but the petitioners who were reverted as per Ext.P3 order were not later promoted provisionally or otherwise, as Assistant Engineers. They contend that there are vacancies in the post of Assistant Engineers and they should be provisionally promoted against those vacancies.

5. A statement has been filed by the department and counter affidavits have been filed by the contesting respondents.

6. Going by EXts.P1 and P2, the first petitioner is senior to respondents 2 to 7 in the category of PWO Grade I. Second petitioner is senior to respondents 3 to 7 in the same category. Therefore if provisional promotions are to be effected, obviously, seniority should have been adhered to. Petitioners, along with the

contesting respondents, were promoted under Ext.P2 order provisionally but subsequently all of them were reverted under Ext.P3 order. But subsequently if provisional promotions were to be effected, it would have been better for the department to follow the rule of seniority in effecting such promotions as well. Insofar as the petitioners in writ petition No.32718/2003 are concerned, this Court under Ext.R5(a) judgment declared the reversion to be illegal. Further it was declared that they shall be treated as having continued as Assistant Engineers. Insofar as the petitioners in Ext.R3(a) judgment are concerned, they are now holding the post of Assistant Engineers pursuant to Ext.P4 interim order.

7. Mr.Gopakumar, learned counsel for the contesting respondents submits that it may not be correct to say that the petitioners are seniors to them. Learned counsel for the petitioners submits that the seniority, interse the petitioners and contesting respondents is correctly shown in Ext.P2 which is described as the final seniority list among Overseer Grade I.

8. In the counter affidavit filed by respondents 2 to 4, it is contended that Exts.P1 and P2 were published only after Ext.P2(a) and P3. Therefore Ext.P2 cannot be treated as correctly reflecting seniority at least for the purpose of promotion to the post of

Assistant Engineer which was effected earlier. In my view, it is not necessary to finally determine this question in these proceedings. But I take note of the fact that Ext.P2 has not been hitherto challenged by any of the contesting respondents. I also take note of the fact that the department has specifically stated in their statement that the petitioners are seniors to the contesting respondents. But nevertheless they were promoted as Assistant Engineers consequent upon the judgment of this Court in Writ Petition 32718/2007.

9. For the present, I think it is appropriate to go by the interse seniority as reflected in Ext.P2 which has been affirmed in the statement filed by the government. If the contesting respondents have any dispute as to the seniority of the petitioners, then it is open to them to challenge it in other appropriate proceedings.

10. From above discussion, it is claim that the petitioners, though senior to respondents 2 to 7 in the post of Overseer Grade I, still continue as PWO Grade-I, in spite of the fact that their juniors have been promoted as Assistant Engineers, though provisionally. I take note of the averment in the statement filed on behalf of the first respondent that there are at present 15 vacancies

in the category. But these are to be set apart for direct recruits. Learned senior government pleader Mr.Nandakumar submits that the petitioners are not Graduate Engineers. Therefore they cannot be accommodated against the vacancies set apart for Graduate Engineers, even if it is by way of provisional promotion, he contends. .

11. In my view, at this stage, since all promotions effected have been provisional and taking note of the fact that going by Ext.P2, petitioners are seniors to respondents 2 to 7, it is appropriate that the petitioners may also be provisionally promoted.

12. In the result, the writ petition is disposed of directing the first respondent to pass orders provisionally promoting the petitioners to the post of Assistant Engineers in the PWD. Orders in this regard shall be passed within a period of one month from the date of receipt of a copy of this judgment. I make it clear that the petitioners' eligibility for provisional promotion in the manner aforementioned shall be fixed with reference to a date, not later than the date of this judgment. The date on which the petitioners and respondents 2 to 7 would be entitled for regular promotion to the post of Assistant Engineer is a matter which has to be determined with reference to the date of occurrence of vacancy in

the concerned category.

The writ petition is disposed of as above.

V.GIRI, JUDGE